

§ 3202.6

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(iii) If the applicable required minimum biobased content for a product to be eligible to display the certification mark is revised by USDA, manufacturers and vendors may continue to label their previously certified product only if it meets the new minimum biobased content level. In those cases where the biobased content of a certified product fails to meet the new minimum biobased content level, USDA will notify the manufacturer or vendor that their certification is no longer valid. Such manufacturers and vendors must increase the biobased content of their product to a level at or above the new minimum biobased content level and must re-apply for certification within 60 days if they wish to continue to use the certification mark. Manufacturers and vendors who have re-applied for certification may continue using the existing certification mark until they receive notification from USDA on the results of their re-application for certification.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011]

§ 3202.6 Appeal processes.

An applicant for certification may appeal a notice of denial of certification to the Program Manager. Entities that have received a notice of violation, and manufacturers and vendors of certified biobased products who have received a notice of suspension or revocation, may appeal to the Program Manager.

(a)(1) Appeals to the Program Manager must be filed within 30 days of receipt by the appellant of a notice of denial of certification, a notice of violation, a notice of suspension, or a notice of revocation. Appeals must be filed in writing and addressed to: Program Manager, USDA Voluntary Labeling Program for Biobased Products, Room 361, Reporters Building, 300 Seventh Street, SW., Washington, DC 20024.

(2) All appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not made in accordance with applicable program regulations, policies, or procedures, or otherwise was not proper.

(b)(1) If the Program Manager sustains an applicant's appeal of a notice

of denial of certification, USDA will issue a notice of certification to the applicant for its biobased product.

(2) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of violation, USDA will rescind the notice and no further action will be taken by USDA.

(3) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of suspension, the manufacturer, vendor, and their designated representative(s) may immediately resume affixing the certification mark to the certified biobased product and USDA will reinstate the product's information to the USDA BioPreferred Program Web site.

(4) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of revocation, the manufacturer or vendor, and its designated representatives may immediately resume affixing the certification mark to the certified biobased product and sell and distribute the certified biobased product with the certification mark. In addition, USDA will reinstate the product's information to the USDA BioPreferred Program Web site.

(c) If the Program Manager sustains a manufacturer's or vendor's appeal of its product's exclusion from the program, the manufacturers or vendors may then apply for certification to use the certification mark on that product, as specified in § 3202.5(a) of this part.

(d) Appeals of any of the Program Manager's decisions may be made to the USDA Assistant Secretary for Administration. Appeals must be made, in writing, within 30 days of receipt of the Program Manager's decision and addressed to: Assistant Secretary for Administration, Room 209A, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250-0103. If the Assistant Secretary for Administration sustains an appeal, the provisions of paragraph (b) of this section will apply.

[76 FR 3806, Jan. 20, 2011. Redesignated and amended at 76 FR 53632, Aug. 29, 2011]

§ 3202.7 Requirements associated with the certification mark.

(a) *Who may use the certification mark?*

(1) *Manufacturers and vendors.* Only manufacturers and vendors who have received a notice of certification, or

designated representatives of the manufacturer or vendor, may affix the official certification mark (in one of the three variations, as applicable) to the product or its packaging. A manufacturer or vendor who has received a notice of certification for a product under this part:

(i) May use the certification mark on the product, its packaging, and other related materials including, but not limited to, advertisements, catalogs, specification sheets, procurement databases, promotional material, Web sites, or user manuals for that product, according to the requirements set forth in this section; and

(ii) Is responsible for the manner in which the mark is used by its companies, as well as its designated representatives, including advertising agencies, marketing and public relations firms and subcontractors.

(2) Other entities.

(i) Other entities may use the mark to advertise or promote certified biobased products in materials including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials, as long as the manufacturer or vendor of the product, or one of their designated representatives, has affixed the mark to the product or its packaging.

(ii) Other entities may use the certification mark; the phrase “USDA Certified Biobased Product/Package/Product & Package,” as applicable; and the BioPreferred Program name in general statements as described in paragraph (b) of this section, as long as the statements do not imply that a non-certified biobased product is certified.

(b) Correct usage of the certification mark.

(1) The certification mark can be affixed only to certified biobased products and their associated packaging.

(2) The certification mark may be used in material including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials to distinguish products that are certified for use of the label from those that are not certified. The certification mark may be used in advertisements for both certified biobased products

and non-certified/labeled products if the advertisement clearly indicates which products are certified/labeled. Care must be taken to avoid implying that any non-certified products are certified.

(3) The certification mark may be used without reference to a specific certified biobased product only when informing the public about the purpose of the certification mark. For example, the following or similar claim is acceptable: “Look for the ‘USDA Certified Biobased Product’ certification mark. It means that the product meets USDA standards for the amount of biobased content and the manufacturer or vendor has provided relevant information on the product to be posted on the USDA BioPreferred Program Web site.” This exception allows manufacturers, vendors, and other entities to use the certification mark in documents such as corporate reports, but only in an informative manner, not as a statement of product certification.

(4) The certification mark may appear next to a picture of the product(s) or text describing it.

(5) The certification mark must stand alone and not be incorporated into any other certification mark or logo designs.

(6) The certification mark may be used as a watermark provided the use does not violate any usage restrictions specified in this part.

(7) The text portion of the certification mark must be written in English and may not be translated, even when the certification mark is used outside of the United States.

(c) Incorrect usage of the certification mark.

(1) The certification mark shall not be used on any product that has not been certified by USDA as a “USDA Certified Biobased Product.”

(2) The certification mark shall not be used on any advertisements or informational materials where both certified biobased products and non-certified products are shown unless it is clear that the certification mark applies to only the certified biobased product(s).

(3) The certification mark shall not be used to imply endorsement by USDA or the BioPreferred Program of any

particular product, service, or company.

(4) The certification mark shall not be used in any form that could be misleading to the consumer.

(5) The certification mark shall not be used by manufacturers or vendors of certified products in a manner disparaging to USDA or any other government body.

(6) The certification mark shall not be used with an altered certification mark or incorporated into other label or logo designs.

(7) The certification mark shall not be used on business cards, company letterhead, or company stationery.

(8) The certification mark shall not be used in, or as part of, any company name, logo, product name, service, or Web site, except as may be provided for in this part.

(9) The certification mark shall not be used in a manner that violates any of the applicable requirements contained in this part.

(d) *Imported products.* The certification mark can be used only with a product that is certified by USDA under this part. The certification mark cannot be used to imply that a product meets or exceeds the requirements of biobased programs in other countries. Products imported for sale in the U.S. must adhere to the same guidelines as U.S.-sourced biobased products. Any product sold in the U.S. as a “USDA Certified Biobased Product/Package/Product & Package” must have received certification from USDA.

(e) *Contents of the certification mark.* The certification mark shall consist of the certification mark artwork, the biobased content percentage, and one of the three variations of text specified in paragraphs (e)(1) through (e)(3) of this section, as applicable.

(1) USDA Certified Biobased Product.

(2) USDA Certified Biobased Product: Package.

(3) USDA Certified Biobased Product & Package.

(f) *Physical aspects of the certification mark.* The certification mark artwork may not be altered, cut, separated into components, or distorted in appearance or perspective. Certification marks that are applied to biobased products that have been designated for preferred

Federal procurement will include the letters “FP” as part of the certification mark artwork. The certification mark must appear only in the colors specified in paragraphs (f)(1) through (f)(3) of this section, unless approval is given by USDA for an exception.

(1) A multi-color version of the certification mark is preferred. The certification mark colors to be applied will be stipulated in the “Marketing Guides” document available on the USDA BioPreferred Program Web site (<http://www.biopREFERRED.gov>).

(2) A one-color version of the certification mark may be substituted for the multi-color version as long as the one color used is one of the multi-color choices reapplied without modification. Further guidance on the one-color certification mark application will also be detailed in the “Marketing Guides.”

(3) A black and white version of the certification mark is acceptable.

(g) *Placement of the certification mark.*

(1) The certification mark can appear directly on a product, its associated packaging, in user manuals, and in other materials including, but not limited to, advertisements, catalogs, procurement databases, and promotional and educational materials.

(2) The certification mark shall not be placed in a manner that is ambiguous about which product is a certified biobased product or that could indicate certification of a non-certified product.

(3) When used to distinguish a certified biobased product in material including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials, the certification mark must appear near a picture of the product or the text describing it.

(i) If all products on a page are certified biobased products, the certification mark may be placed anywhere on the page.

(ii) If a page contains a mix of certified biobased products and non-certified products, the certification mark shall be placed in close proximity to the certified biobased products. An individual certification mark near each certified biobased product may be necessary to avoid confusion.

(h) *Minimum size and clear space recommendations for the certification mark.*

(1) The certification mark may be sized to fit the individual application as long as the correct proportions are maintained and the certification mark remains legible.

(2) A border of clear space must surround the certification mark and must be of sufficient width to offset it from surrounding images and text and to avoid confusion. If the certification mark's color is similar to the background color of the product or packaging, the certification mark in a contrasting (*i.e.*, black, white) color may be used.

(i) *Where to obtain copies of the certification mark artwork.* The certification mark artwork is available at the USDA BioPreferred Program Web site <http://www.biopreferred.gov>.

§ 3202.8 Violations.

This section identifies the types of actions that USDA considers violations under this part and the penalties (*e.g.*, the suspension or revocation of certification) associated with such violations.

(a) *General.* Violations under this section occur on a per product basis and the penalties are to be applied on a per product basis. Entities cited for a violation under this section may appeal using the provisions in § 3202.6. If certification for a product is revoked, the manufacturer or vendor whose certification has been revoked may seek recertification for the product using the procedures specified under the provisions in § 3202.5.

(b) *Types of violations.* Actions that will be considered violations of this part include, but are not limited to, the following specific examples:

(1) *Biobased content violations.* The Program Manager will utilize occasional random testing of certified biobased products to compare the biobased content of the tested product with the product's applicable minimum biobased content and the biobased content reported by the manufacturer or vendor in its approved application. Such testing will be conducted using ASTM Method D6866. USDA will provide a copy of the results of its testing to the applicable manufacturer or vendor.

(i) If USDA testing shows that the biobased content of a certified biobased product is less than its applicable minimum biobased content, then a violation of this part will have occurred.

(ii) If USDA testing shows that the biobased content is less than that reported by the manufacturer or vendor in its approved application, but is still equal to or greater than its applicable minimum biobased content(s), USDA will provide written notification to the manufacturer or vendor. The manufacturer or vendor must submit, within 90 days from receipt of USDA written notification, a new application for the lower biobased content. Failure to submit a new application within 90 days will be considered a violation of this part.

(A) The manufacturer or vendor can submit in the new application the biobased content reported to it by USDA in the written notification.

(B) Alternatively, the manufacturer or vendor may elect to retest the product in question and submit the results of the retest in the new application. If the manufacturer or vendor elects to retest the product, it must test a sample of the current product.

(2) *Certification mark violations.*

(i) Any usage or display of the certification mark that does not conform to the requirements specified in § 3202.7.

(ii) Affixing the certification mark to any product prior to issuance of a notice of certification from USDA.

(iii) Affixing the certification mark to a certified biobased product during periods when certification has been suspended or revoked.

(3) *Application violations.* Knowingly providing false or misleading information in any application for certification of a biobased product constitutes a violation of this part.

(4) *USDA BioPreferred Program Web site violations.* Failure to provide to USDA updated information when the information for a certified biobased product becomes outdated or when new information for a certified biobased product becomes available constitutes a violation of this part.

(c) *Notice of violations and associated actions.* USDA will provide the applicable manufacturer or vendor or their